Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

October Term, 1995

THE STATE OF FLORIDA,

Petitioner,

v.

JUAN SOCA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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QUESTION PRESENTED

WHEN CONTRABAND IS LAWFULLY SEIZED FROM A PROBATIONER, BASED ON A "SPECIAL NEEDS" SEARCH, IS THAT EVIDENCE ADMISSIBLE AGAINST THE PROBATIONER IN BOTH THE PROBATION REVOCATION HEARING AND THE TRIAL ON THE SUBSTANTIVE CRIMINAL CHARGE.

TABLE OF CONTENTS

Page(s)

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 7

THE DECISION OF THE COURT BELOW CONFLICTS WITH DECISIONS OF THIS COURT AND DECISIONS OF THE UNITED STATES COURTS OF APPEAL WHERE:

A. THE COURT BELOW HELD THAT A SEARCH OF A PROBATIONER, TO ENSURE THAT HE IS NOT VIOLATING PROBATION, IS REASONABLE BUT THE USE OF THE FRUITS OF SUCH A SEARCH ARE LIMITED TO PROBATION REVOCATION PROCEEDINGS SINCE THE SEARCH WAS BASED ON THE REASONABLENESS STANDARD AND NOT THE PROBABLE CAUSE STANDARD, ... 7

B. THE COURT BELOW IMPROPERLY CONSTRUED THIS COURT'S DECISION IN *GRIFFIN v. WISCONSIN* TO BE APPLICABLE ONLY TO A WARRANTLESS SEARCH PERFORMED BY A PROBATION OFFICER PURSUANT TO A STATE REGULATION THAT AUTHORIZED SUCH SEARCHES ON THE BASIS OF REASONABLE SUSPICION AND NOT TO

SITUATIONS WHERE SIMILAR GUIDANCE IS PROVIDED BY THE CONDITIONS OF PROBATION IMPOSED ON THE PROBATIONER BY THE SENTENCING JUDGE. 13

CONCLUSION 17

TABLE OF AUTHORITIES

Case(s) — *Page(s)*

Abel v. United States, 362 U.S. 217, 80 S. Ct. 683, 4 L. Ed. 2d 668 (1960) 5, 9

Bernie v. State, 524 So. 2d 988 (Fla. 1988) 9

Gouled v. United States, 255 U.S. 298, 41 S. Ct. 261, 65 L. Ed. 647 (1921) 5, 9, 10

Griffin v. Wisconsin, 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987) 6, 12, 13–16

Grubbs v. State, 373 So. 2d 905 (Fla. 1979) 4, 5, 6, 8, 13, 14

Latta v. Fitzharris, 521 F. 2d 246 (9th Cir. 1975) 11, 12

Morrissey v. Brewer, 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1922) 12

New York v. Burger, 482 U.S. 691, 107 S. Ct. 2636, 96 L. Ed. 2d 601 (1987) 5, 9, 10

People v. Anderson, 189 Colo. 34, 536 P. 2d 305 (1975) 13

People v. Huntley, 43 N.Y. 2d 175, 371 N.E. 2d 794, 401 N.Y.S.2d 31 (1977) 13

Perez v. State, 620 So. 2d 1256 (Fla. 1993) 9

R.A.V. v. City of St. Paul, Minnesota, 505 U.S. 377, 112 S. Ct. 2578, 120 L. Ed. 2d 305 (1992) 14

Seim v. State, 95 Nev. 89, 590 P. 2d 1152 (1979) 13

State v. Earnest, 293 N.W. 367 (Minn. 1980) 13

State v. Velasquez, 672 P. 2d 1254 (Utah 1983) 13

United States v. Cosuelo-Gonzalez, 521 F. 2d 259 (9th Cir. 1975) 12

United States v. Giannetta, 909 F. 2d 571 (1st Cir. 1990) 15

United States v. Janis, 428 U.S. 433, 96 S. Ct. 3021, 49 L. Ed. 2d 1046 (1976) 9

United States ex. rel. Santos v. New York State Board of Parole, 441 F. 2d 1216 (2nd Cir. 1971) 10, 11

United States v. Scott, 678 F. 2d 32 (5th Cir. 1982) . . . 11

United States v. Schoenrock, 868 F. 2d 289 (8th Cir. 1989) 15

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OPINIONS BELOW

The opinion of the Supreme Court of Florida is reported at _So. 2d_, 21 Fla. L. Weekly S184, No. 86,284 (Fla. April 25, 1996). [A-1].[1] The opinion of the District Court of Appeal of Florida, Third District is reported at 656 So. 2d 536. [A-10]. The trial court's order denying the motion of Respondent, Juan Soca, to suppress the evidence is not reported. [A-21].

JURISDICTION

The Supreme Court of Florida's opinion was filed on April 25, 1996. This Court has jurisdiction. 28 U.S.C. § 1257(a).

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1 The symbol "A" followed by the appropriate number represents a citation to the materials contained in the Appendix to this pleading.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment IV, United States Constitution, provides, in pertinent part:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause....

Amendment XIV, § I, United States Constitution, provides, in pertinent part:

> ...nor shall any state deprive any person of life, liberty, or property, without due process of law....

Article I, § 12, Florida Constitution, provides:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under de-

cisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

STATEMENT OF THE CASE

Respondent, Juan Soca, was the Petitioner in the Supreme Court of Florida. The facts of the case, as set forth in the decision below, are as follows:

> The defendant, Juan Soca, who was on probation for two previous criminal convictions, lived in Monroe County with his parents in their house trailer. An investigator from the Monroe County State Attorney's office contacted Lisa Kaminski, the defendant's probation supervisor, and advised her that he believed Soca was dealing in cocaine. When Ms. Kaminski reviewed the defendant's files, she found that he had tested positive for cocaine in his most recent urinalysis. Based upon this information, Ms. Kaminski instructed the defendant's probation officer to search the defendant's residence for contraband which might indicate that the defendant had violated the terms of his probation.
>
> The probation officer and the investigator went to the defendant's trailer and, when the defendant arrived at the trailer twenty minutes later, the probation officer informed the defendant that he was going to search the trailer in order to monitor compliance with the terms of the defendant's probation. The defendant told him to go ahead and perform the search, which the probation officer conducted himself. The search revealed cocaine hidden under the floor of a hallway closet in the trailer. No search warrant was ever sought or obtained, and the

> investigator testified that he consciously decided not to seek a warrant from a neutral magistrate but rather to have the probation authorities conduct the search.
>
> After Soca was charged with possession of cocaine, he moved to suppress, arguing that the warrantless search of his trailer barred the use of the fruits of the search in any proceedings other than his probation revocation proceedings. The trial court denied the motion and Soca was subsequently convicted by a jury and sentenced to fifteen years imprisonment. He also pled guilty to two counts of violating probation, and was sentenced to one year on each violation, with all sentences to run concurrently. The Third District affirmed and held that the trial court properly denied Soca's motion to suppress. [A-1–2].

The Supreme Court of Florida quashed the Third District's decision and held that its prior decision in *Grubbs v. State,* 373 So. 2d 905 (Fla. 1979) was still good law and thus was controlling. *Grubbs* stands for the proposition that it is reasonable for a probation supervisor to search a probationer's person or living quarters to ensure that the probationer is not violating his probation. Although the Supreme Court of Florida authorized a reasonable search of probationers, it held that a warrant was required if the State wanted to use the lawfully seized evidence in any action other than the probation revocation hearing.

Petitioner's position, that the conformity clause of Article I, § 12 of the Florida Constitution required affirmance, was rejected by the Supreme Court of Florida. The conformity clause, which is emphasized below, provides:

> *...This right shall be construed in conformity with the 4th Amendment to the United States*

> *Constitution as interpreted by the United States Supreme Court.* Articles or information obtained in violation of this right shall not be admissible in evidence *if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.*

Although the Court recognized that it was bound to follow the interpretations of this Court with respect to the Fourth Amendment, the Supreme Court of Florida felt free to disregard this Court's prior precedents in this area. The basis for this decision was that this Court had not yet rendered a decision, both legally and factually, directly on point which overruled *Grubbs*. The Court specifically held as follows:

> The State argues that the issue is controlled by United States Supreme Court decisions in *Abel v. United States,* 362 U.S. 217, 239, 80 S. Ct. 683, 697, 4 L. Ed. 2d 668 (1960) (holding items of evidence seized as result of arrest by immigration officials acting under administrative warrant were admissible against defendant in prosecution for espionage); *New York v. Burger,* 482 U.S. 691, 716, 107 S.Ct. 2636, 2651, 96 L. Ed. 2d 601 (1987) (holding that discovery of evidence of crimes in course of otherwise proper administrative inspection of closely regulated business does not render that search illegal or administrative scheme suspect); and *Gouled v. United States,* 255 U.S. 298, 312, 41 S. Ct. 261, 65 L. Ed. 647 (1921) (noting that when property was seized pursuant to legally sufficient search warrant, it could be used as evidence to prove any crime against accused so long as it was relevant). We disagree. While we recognize that these cases deal with instances where a defendant's prop-

> erty was searched for one purpose and the evidence discovered was then admissible against the defendant for other purposes, none of them address the precise issue before us. Because the U.S. Supreme Court has not specifically decided the issue in this case, we reject the State's contention that *Grubbs* has been effectively overruled under the conformity clause amendment to Article I, § 12 of the Florida Constitution. [A-6].

The Supreme Court of Florida then rejected Petitioner's argument that Florida's scheme regulating probation supervision was sufficiently analogous to the Wisconsin regulation at issue in *Griffin v. Wisconsin,* 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987) so as to make the holding in *Griffin* controlling. The Supreme Court of Florida then held that until this Court rules otherwise under the Fourth Amendment, a probation officer's right to conduct a probation search is based on its holding in *Grubbs.*

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE COURT BELOW CONFLICTS WITH DECISIONS OF THIS COURT AND DECISIONS OF THE UNITED STATES COURTS OF APPEAL WHERE:

A. THE COURT BELOW HELD THAT A SEARCH OF A PROBATIONER, TO ENSURE THAT HE IS NOT VIOLATING PROBATION, IS REASONABLE BUT THE USE OF THE FRUITS OF SUCH A SEARCH ARE LIMITED TO PROBATION REVOCATION PROCEEDINGS SINCE THE SEARCH WAS BASED ON THE REASONABLENESS STANDARD AND NOT THE PROBABLE CAUSE STANDARD,

The Respondent, Juan Soca, was on probation for two previous convictions. An investigator from the Monroe County State Attorney's office contacted Respondent's probation supervisor and advised her that, based on information provided by an informant, he believed Respondent was dealing in cocaine. Respondent's probation supervisor reviewed Respondent's files and found that he had tested positive for cocaine in his most recent urinalysis. Based on this information, Respondent's probation supervisor instructed his probation officer to search Respondent's residence for contraband which might indicate that the Respondent had violated the terms of his probation. The probation officer, after he advised Respondent that he was going to search the trailer in order to monitor compliance with the terms of his probation, searched Respondent's residence and the search uncovered cocaine.

Based on the foregoing facts, both the trial court and the intermediate appellate court found a reasonable belief that Respondent was in violation of his probation and thus, found that the search, without a warrant, was a lawful probation search. These courts then held that since the cocaine was seized during a lawful probation search, the cocaine was admissible in both Respondent's probation revocation hearing and his trial on the possession of cocaine charge.

The Supreme Court of Florida quashed this decision, relying on a 1979 decision in *Grubbs v. State,* 373 So. 2d 905 (Fla. 1979) (cocaine that was lawfully seized during the probation search was only admissible in the probation revocation proceeding and not in the trial on the possession of cocaine charge).

The Supreme Court of Florida rejected Petitioner's argument that under this Court's Fourth Amendment jurisprudence, evidence that is lawfully seized for one purpose is admissible in all proceedings. This argument was rejected on the following ground:

> ...While we recognize that these cases deal with instances where a defendant's property was searched for one purpose and the evidence discovered was then admissible against the defendant for other purposes, none of them address the precise issue before us. Because the U.S. Supreme Court has not specifically decided the issue in this case, we reject the State's contention that *Grubbs* has been effectively overruled under the conformity clause amendment to Article I, § 12 of the Florida Constitution. [A-6–7].

In 1982, Article I, § 12 of the Florida Constitution, relating to search and seizure, was amended to include the "conformity clause" which requires that the rights provided by said section be construed in conformity with the Fourth Amend-

ment to the Unites States Constitution, as interpreted in all past and future decisions, by this Court. *Perez v. State,* 620 So. 2d 1256 (Fla. 1993). Florida's exclusionary rule is now the federal one which exists by judicial decisions and is controlled by decisions from this Court. *Bernie v. State,* 524 So. 2d 988 (Fla. 1988).

Although the Supreme Court of Florida stated it was bound by this Court's Fourth Amendment jurisprudence, the Court rejected the Fourth Amendment principle that where evidence is lawfully seized for one purpose it is then always admissible against a defendant for all other purposes. This rejection was based on the fact that this Court has not yet applied the foregoing legal principle to the precise factual scenario presented herein.

The Court erroneously interpreted this Court's decisions in *Gouled v. United States,* 255 U.S. 298, 41 S. Ct. 261, 65 L. Ed. 647 (1921); *Abel v. United States,* 362 U.S. 217, 80 S.Ct. 683, 4 L.Ed. 2d 668 (1960) and *New York v. Burger,* 482 U.S. 691, 107 S. Ct. 2636, 96 L. Ed. 2d 601 (1987).

For example,in *Gouled,* this Court generically held that once evidence is lawfully secured pursuant to the Fourth Amendment, that evidence can be used against the defendant in any proceeding regardless of the type of proceeding. The main purpose in excluding evidence seized in violation of the Fourth Amendment is to substantially deter future unlawful police conduct. Therefore, this Court held when evidence seized is not in violation of the Fourth Amendement, there is no deterrent effect if such evidence is excluded. *United States v. Janis,* 428 U.S. 433, 96 S. Ct. 3021, 49 L. Ed. 2d 1046 (1976).

Likewise, in *Abel,* the defendant was arrested pursuant to an INS deportation warrant. The warrant was an administrative one issued by the New York Director of INS on the grounds that a prima facie case of deportability was established. During the search incident to the administrative warrant, evidence of defendant's participation in espionage

was uncovered and seized. This Court was presented with the question of whether the evidence of espionage, which was secured pursuant to a concededly valid administrative warrant which required less than probable cause for its issuance, was admissible against the defendant at his trial for espionage. This Court held that such evidence was admissible since the evidence of espionage was seized as a consequence of wholly lawful conduct. This being so, this Court saw no rational basis for excluding the relevant espionage items from defendant's trial. This Court found that since no illegal search or seizure occurred, no police misconduct would be condemned, and, this Court would not be lending its aid to lawless government action since none occurred. This Court further held that if there is a showing that the less than probable cause search was undertaken in bad faith to avoid the probable cause requirement, then, and only then, would the evidence be inadmissible in the criminal trial.

This same principle was subsequently applied in *Burger,* when this Court held that the discovery of evidence of crimes in the course of an otherwise proper administrative inspection of a closely regulated business does not render that search illegal or the administrative scheme suspect.

Moreover, the general principle of *Gouled v. United States, supra,* has also been applied to parole searches by the federal courts. These Courts have held that evidence lawfully secured by a "special needs" parole search is also admissible in both the parole revocation hearing and the new criminal prosecution.

In *United States ex. rel. Santos v. New York State Board of Parole,* 441 F. 2d 1216, 1217 (2nd Cir. 1971) the Court found that a parolee does not have the same Fourth Amendment rights as those guaranteed to ordinary citizens and therefore approved of a search of a parolee when there is reasonable grounds to investigate whether the parolee was violating his parole. Santos contended that the search in question could not be fairly characterized as a mere act of routine parole

supervision since the evidence obtained by his parole officer was utilized against him in a new criminal prosecution rather than to revoke his existing parole. Santos contended that his parole officer was not merely seeking to ascertain proof of a parole violation but was acting as an agent of the police to enable them to circumvent constitutional requirements that would otherwise be applicable had they investigated him without the assistance of the parole officer. After finding that Santos' parole officer was lawfully performing his duties since the search was necessary to insure that Santos was abiding by his parole conditions, the Court held:

> ...To hold that evidence obtained by a parole officer in the course of carrying out this duty cannot be utilized in a subsequent prosecution because evidence obtained directly by the police in such a manner would be excluded, would unduly immunize parolees from conviction.

Id. at 1218. The Court held that the mere fact that the police officer was the first to suspect that Santos was engaged in criminal activity and related this fact to the parole officer and was present at the subsequent investigation in no way alters the legality of the search. Therefore, it did not require the suppression of the seized evidence in a subsequent criminal prosecution.

The Fifth Circuit in *United States v. Scott,* 678 F. 2d 32 (5th Cir. 1982), relying on *Santos,* held that evidence seized as a result of a parole search, which search was based on the reasonableness standard, was also admissible against the defendant in the criminal trial.

The Ninth Circuit in *Latta v. Fitzharris,* 521 F. 2d 246 (9th Cir. 1975) likewise was faced with the same situation as the Second Circuit in *Santos,* and reached the same result. The Court found that a parole search does not require a warrant but only requires a reasonable belief that a search is necessary for the parole officer to insure that the parolee is not

violating parole. The Court then rejected Latta's contention that even if the search was a valid parole search, the evidence could only be used in his parole revocation hearing. The Court held that even when evidence seized is unrelated to the purpose of the regulatory search, it is admissible in a criminal prosecution as long as it was lawfully seized in the first place.

Thereafter, the Ninth Circuit in *United States v. Consuelo-Gonzalez,* 521 F.2d 259 (9th Cir. 1975), extended its holding in *Latta* to probationers. In this case, the Court found that a probationer's Fourth Amendment protections were no greater than a parolee's Fourth Amendment protections. As such, the Court held that a search of a probationer only has to meet the reasonableness standard and if it meets that standard the evidence secured therefrom is admissible in the criminal prosecution.

An explicit extension of this principle of law by this Court to probation searches is warranted since there is no constitutional difference between probation and parole for purposes of the Fourth Amendment. Both probationers and parolees enjoy only conditional liberty properly dependent on the observance of special conditions. *Morrissey v. Brewer,* 408 U.S. 471, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1922). In *Griffin v. Wisconsin,* 483 U.S. 868, 873–874, 103 S. Ct. 3164, 3168–69, 97 L. Ed. 2d 709 (1987) this Court held that the operation of a parole system, like a probation system, "presents special needs beyond normal law enforcement that may justify departures from the usual warrant and probable cause requirements." Since both systems are constitutionally similar, no useful Fourth Amendment purpose would be served by not announcing a new rule of law permitting evidence lawfully seized in a probation search from being admitted in a subsequent criminal trial. The instant decision, which holds otherwise, is a radical departure from precedent. This solitary case has caused a schism in authority which could continue to widen

without guidance from this Court.[2] Therefore, this case warrants consideration by this Court.

B. THE COURT BELOW IMPROPERLY CONSTRUED THIS COURT'S DECISION IN *GRIFFIN v. WISCONSIN* TO BE APPLICABLE ONLY TO A WARRANTLESS SEARCH PERFORMED BY A PROBATION OFFICER PURSUANT TO A STATE REGULATION THAT AUTHORIZED SUCH SEARCHES ON THE BASIS OF REASONABLE SUSPICION AND NOT TO SITUATIONS WHERE SIMILAR GUIDANCE IS PROVIDED BY THE CONDITIONS OF PROBATION IMPOSED ON THE PROBATIONER BY THE SENTENCING JUDGE.

The Supreme Court of Florida attempted to distinguish *Griffin v. Wisconsin,* by finding that unlike *Griffin,* Florida's probation statute does not contain a scheme expressly authorizing or regulating the authority of probation officers or supervisors to conduct a probationary search when it is supported by reasonable grounds. Therefore, that Court held that it was not bound by *Griffin* and instead relied on its decision in *Grubbs* (holding that evidence lawfully seized during the course of a probation search is not admissible against the probationer in a new criminal proceeding).

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2 State Supreme Court's that have decided this issue have held, contrary to the Supreme Court of Florida, that evidence seized within the scope of a reasonable search by a parole or probation officer is admissible in the prosecution of another crime. *People v. Anderson,* 189 Colo 34, 536 P. 2d 302 (1975); *State v. Velasquez,* 672 P. 2d 1254 (Utah 1983); *People v. Huntley,* 43 N.Y. 2d 175, 371 N.E. 2d 794, 401 N.Y.S. 2d 31 (1977); *Seim v. State,* 95 Nev. 89, 590 P. 2d 1152 (1979); *State v. Earnest,* 293 N.W. 2d 365 (Minn. 1980).

While this Court is bound by the Supreme Court of Florida's interpretation that the Florida probation statute is not a regulatory scheme, *R.A.V. v. City of St. Paul, Minnesota,* 505 U.S. 377, 112 S.Ct. 2578, 120 L. Ed. 2d 305 (1992), this does not mean that *Griffin* is not controlling herein. *Griffin* is controlling because Florida has determined that probation searches are supported by the "special needs" justifications which allow searches on less then probable cause and therefore the search is constitutional as long as it is based on reasonable suspicion. *Grubbs, supra.*[3]

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3 In *Grubbs,* the Supreme Court of Florida recognized that an individual does not absolutely forfeit the protection of the Fourth Amendment by becoming a probationer. The Court held that the Florida Statute that established probation inherently included the duty of the probation supervisor to properly supervise the individual on probation to ensure compliance with the order placing the individual on probation. The probation statute, the Court found, expressly authorized the probation supervisor to arrest a probationer without a warrant whenever there is reasonable ground to believe that the probationer has violated his probation. The Court realized that it would be unreasonable to require a probation supervisor to supervise an individual on probation without the authority to enter the living quarters of the probationer to observe his life style; to require the probationer to respond to the probation supervisor concerning requests for information to explain his noncriminal conduct; and to permit a reasonable search of his personal quarters by the supervisor.

The *Grubbs* Court, interpreting Article I, § 12 of the Florida Constitution that existed prior to the addition of the conformity clause, held that in Florida for evidence derived from a search or seizure to be admissible in either probation revocation proceeding or a new criminal action, the evidence must be properly or reasonably obtained given the circumstances and the responsibilities of the probation supervisor or a law enforcement official who makes the search and seizure. The Court found that Florida's probation system presents "special needs" beyond normal law enforcement, which needs justified the departure from the usual warrant and probable cause requirements. Thereafter,it held that a search of a probationer's person or residence without a warrant is a reasonable search and absolutely necessary for the proper supervision of probationers. However, the Court limited the use of evidence seized pursuant to the reasonable, yet warrantless, probation search, to probation proceedings and not to the new criminal trial.

In *United States v. Giannetta,* 909 F.2d 571 (1st Cir. 1990) the Court was not persuaded when Giannetta similarly attempted to distinguish *Griffin* by arguing that a regulatory scheme did not exist in his case. The First Circuit did not read *Griffin* as approving only probation searches conducted pursuant to a legislative or administrative framework. The Court observed that such regulatory framework provides guidance to probation officers and furnishes search constraints, but also noted that similar guidance and constraints are provided where a sentencing judge narrowly tailors the need for and scope of any probation search to the circumstances of the individual case. The Court concluded that in such a setting, probation searches based on reasonable suspicion are supported by the same "special needs" justification and have the same characteristics of reasonableness as the search upheld in *Griffin.*

The Court then found that the search condition which authorized the search was constitutional. The condition required that Giannetta, at all times during his period of probation, readily submit to a search of his residence and of any other premises under his dominion and control, by his supervising probation officer, upon the officer's request. The Court was troubled by the search condition's failure to contain a reasonableness limitation since on its face the condition allowed a search by a probation officer with or without reasonable suspicion, which would render the condition unconstitutional. However, the Court found that the absence of a reasonableness condition was not objectionable since the decision to search was in fact narrowly and properly made on the basis of reasonable suspicion that Giannetta's residence contained evidence pertaining to violations of his probation.

In *United States v. Schoenrock,* 868 F. 2d 289 (8th Cir. 1989), the defendant was placed on probation and a condition of that probation allowed warrantless searches of defendant's premises, vehicles and persons for the presence of alcoholic or controlled substances. A warrantless search of the defendant's residence uncovered beer, marijuana and other pro-

hibited items, leading to the probation being revoked. On appeal, it was contended that the probation condition was unreasonable under the Fourth Amendment since the Federal Probation Act did not contain a regulatory scheme.

The Eight Circuit rejected this position. That Court found that the reasonableness of a probation search, under a *Griffin* analysis, can be determined by careful findings of a sentencing court. The Court found that the lower court carefully included the particular needs of the defendant and concluded that the special conditions relating to the use of alcohol and controlled substances were the only way to ensure compliance with the other probation terms. The Court then held that:

> ...Griffin compels us to hold that the district court's findings leading to the imposition of the special search conditions were sufficient to make those conditions reasonable for fourth amendment purposes.

Id. at 293 (footnote omitted).

In this case, the probation order did not specifically authorize a search of Respondent's residence. However, the conditions which allowed a home visit and authorized a drug test provided the Respondent's probation officer with an adequate framework within which to conduct the search. Likewise, the fact that these conditions do not contain a reasonableness limitation is also not objectionable because the search was undertaken only after the facts established that there was reasonable suspicion that Respondent was violating his probation by either using or possessing cocaine. These conditions satisfy the *Griffin* requirement of a regulatory scheme, and therefore contrary to the Supreme Court of Florida's opinion, this Court's decision in *Griffin* is controlling. This present split in authority will only continue to widen without guidance from this Court, and therefore this case warrants consideration by this Court.

CONCLUSION

Based on the foregoing reasons, the Petitioner, the State of Florida, respectfully requests that this Court grant its Petition for a Writ of Certiorari to the Supreme Court of Florida and summarily reverse the Supreme Court of Florida based on the authorities herein cited.

Respectfully submitted,

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TABLE OF CONTENTS

Page(s)

Supreme Court of Florida Opinion filed April 25, 1996 . . . . . A-1

Third District Court of Appeal Opinion filed June 7, 1995 . . . . . A-10

Circuit Court of the 16th Judicial Circuit of the State of Florida in and for Monroe County Order Denying Motion to Suppress Dated August 29, 1994 . . . . . A-21

Conditions of Probation Dated March 23, 1993 . . . . A-31

Supreme Court of Florida

JUAN SOCA,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

No. 86,284
[April 25, 1996]

PER CURIAM.

We have for review *Soca v. State*, 656 So. 2d 536 (Fla. 3d DCA 1995), which expressly and directly conflicts with our opinion in *Grubbs v. State*, 373 So. 2d 905 (Fla. 1979). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. Because the district court failed to apply and follow our holding in *Grubbs*, we quash *Soca*.

FACTS

The defendant, Juan Soca, who was on probation for two previous criminal convictions, lived in Monroe County with his parents in their house trailer. An investigator from the Monroe County State Attorney's office contacted Lisa Kaminski, the defendant's probation supervisor, and advised her that he believed Soca was dealing in cocaine. When Ms. Kaminski reviewed the defendant's files, she found that he had tested positive for cocaine in his most recent urinalysis. Based upon this information, Ms. Kaminski instructed the defendant's probation officer to search the defendant's residence for contraband which might indicate that the defendant had violated the terms of his probation.

The probation officer and the investigator went to the defendant's trailer and, when the defendant arrived at the trailer twenty minutes later, the probation officer informed the defendant that he was going to search the trailer in order to monitor compliance with the terms of the defendant's

probation. The defendant told him to go ahead and perform the search, which the probation officer conducted himself. The search revealed cocaine hidden under the floor of a hallway closet in the trailer. No search warrant was ever sought or obtained, and the investigator testified that he consciously decided not to seek a warrant from a neutral magistrate but rather to have the probation authorities conduct the search.

After Soca was charged with possession of cocaine, he moved to suppress, arguing that the warrantless search of his trailer barred the use of the fruits of the search in any proceedings other than his probation revocation proceedings. The trial court denied the motion and Soca was subsequently convicted by a jury and sentenced to fifteen years imprisonment. He also pled guilty to two counts of violating probation, and was sentenced to one year on each violation, with all sentences to run concurrently. The Third District affirmed and held that the trial court properly denied Soca's motion to suppress.

GRUBBS

This Court has held that a warrantless search of a probationer's person or residence by a probation supervisor is valid to the extent that the evidence discovered in the search may be used in probation revocation proceedings. *Grubbs v. State,* 373 So. 2d 905, 907 (Fla. 1979). However, in *Grubbs* we expressly held that evidence obtained in a probationary search may not be admitted against the probationer in a separate criminal proceeding unless the search meets customary search and seizure standards established under Article I, § 12 of the Florida Constitution. *Id.*[1] In his opinion for a unanimous court, Justice Overton summarized the holding of *Grubbs:*

1 In that regard, the defendant's status as a probationer is an appropriate factor to be considered in determining whether the evidence seized in a probationary search is also admissible in a new criminal proceeding under Article I, § 12. *Id.* For example, the fact that a defendant is on probation and the nature of the offense for which he was placed on probation may be part of the showing made by the State in seeking a search warrant.

> In summary, the fourth amendment ordinarily applies to a probationer when evidence is used to prove a separate criminal offense although the probationer's status gives the probation supervisor standing to be in locations not ordinarily available to law enforcement officers. Further, when either probation supervisors or law enforcement officers seek a warrant, the probationary status may be used as a factor to establish probable cause.

Id. at 910.

THE SEARCH OF SOCA'S TRAILER

In this case, none of the parties contend that the State did not have the opportunity to seek a search warrant. To the contrary, the record indicates that the prosecutor made a conscious choice *not* to seek a warrant and instead allow the search to be conducted pursuant to the supervisory authority granted probation supervisors in *Grubbs*. Soca does not dispute the fact that the evidence seized during the search of his parent's trailer could be used against him in probation violation proceedings.

The State acknowledges the holding of *Grubbs* and further acknowledges that the Department of Corrections (DOC) has codified the *Grubbs* rule in its *Community Control Implemen-*

tation Manual (hereinafter *CCIM*).[2] In this case, the search of Soca's trailer was carried out by probation authorities in a manner consistent with DOC procedures and, as all parties agree, in accord with *Grubbs*.

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2 For instance, the DOC Manual states, "An administrative probation or parole revocation hearing is different from a criminal trial to determine the guilt of a violation charge. *Evidence may be presented at a revocation hearing that could not be admissible in a trial." CCIM* at 41 (emphasis added). Moreover, the DOC specifically notes that the authority to search a probationer's residence under *Grubbs* is limited to correctional probation officers and supervisors:

> *Evidence obtained by search by an officer* — is admissible at a revocation hearing even though there was no search warrant. The courts have held that the search of a probationer's person or residence by his probation officer without a warrant is reasonable and absolutely necessary for probation supervision. However, granting such authority to law enforcement officials is not permissible....Evidence conducted at such searches may be used at revocation hearings.

Id. at 43. Finally, the DOC requires that its probation staff follow a procedure consistent with *Grubbs* when conducting a probationary search like the one in this case:

> c. No officer shall make a planned search of an offender's residence, car or person unless he has specific approval of his supervisor. Before making any planned searches, the officer shall document and review the plan with the supervisor, indicating reasons and risks involved. Upon approval, a search warrant may be requested and law enforcement assistance obtained if the situation warrants such action. Probation and parole staff shall avoid "raids" on probationer's [sic] houses.
>
> d. It is necessary to have another officer or supervisor present when conducting searches that are not routine and searches shall be carried out with the assistance of local law enforcement officers where possible....If a search warrant has not been procured by local law enforcement, any seized evidence can only be used for revocation of supervision.

Id. at 45.

THE PRIMACY OF THE FLORIDA CONSTITUTION AND CASELAW

Our holding in *Grubbs* was expressly predicated upon the protections afforded our citizens against unreasonable searches and seizures set out in the Florida Constitution. The State contends that our ruling in *Grubbs* has been superseded by the holdings of the United States Supreme Court and an amendment to our state constitution requiring us to apply U.S. Supreme Court decisions to Florida search and seizure issues.

In 1982, Article I, § 12 of the Florida Constitution, relating to search and seizure, was amended to read:

> Searches and seizures. — The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. *This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court.* Articles or information obtained in violation of this right shall not be admissible in evidence *if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.*

The underlined portions above constitute the 1982 amendment. However, in the absence of a controlling U.S. Supreme Court decision, Florida courts are still "free to provide its

citizens with a higher standard of protection from governmental intrusion than that afforded by the Federal Constitution." *State v. Lavazzolli,* 434 So. 2d 321, 323 (Fla. 1983); *see also Traylor v. State,* 596 So. 2d 957, 961 (Fla. 1992) (affirming the rule of primacy of Florida's constitution).

With the conformity clause amendment, we are bound to follow the interpretations of the United States Supreme Court with respect to the Fourth Amendment and provide to Florida citizens no greater protection than those interpretations. *Bernie v. State,* 524 So. 2d 988, 990–91 (Fla. 1988). However, when the United States Supreme Court has not previously addressed a particular search and seizure issue which comes before us for review, we will look to our own precedent for guidance. *See Traylor; State v. Cross,* 487 So. 2d 1056, 1057 (Fla.), *cert. dismissed,* 479 U.S. 805, 107 S.Ct. 248, 93 L.Ed. 2d 172 (1986). We find no controlling U.S. Supreme Court decision on point to overrule our holding in *Grubbs.*

The State argues that the issues is controlled by United States Supreme Court decisions in *Abel v. United States,* 362 U.S. 217, 239, 80 S.Ct. 683, 697, 4 L. Ed. 2d 668 (1960) (holding items of evidence seized as result of arrest by immigration officials acting under administrative warrant were admissible against defendant in prosecution for espionage); *New York v. Burger,* 482 U.S. 691, 716, 107 S. Ct. 2636, 2651, 96 L. Ed. 2d 601 (1987) (holding that discovery of evidence of crimes in course of otherwise proper administrative inspection of closely regulated business does not render that search illegal or administrative scheme suspect); and *Gouled v. United States,* 255 U.S. 298, 312, 41 S. Ct. 261, 65 L. Ed. 647 (1921) (noting that when property was seized pursuant to legally sufficient search warrant, it could be used as evidence to prove any crime against accused so long as it was relevant). We disagree. While we recognize that these cases deal with instances where a defendant's property was searched for one purpose and the evidence discovered was then admissible against the defendant for other purposes, none of them address the

precise issue before us. Because the U.S. Supreme Court has not specifically decided the issue in this case, we reject the State's contention that *Grubbs* has been effectively overruled under the conformity clause amendment to Article I, § 12 of the Florida Constitution.

Likewise, we reject the State's argument, as well as the district court's conclusion, that Florida's statutory scheme regulating probation supervision, sections 948.03 and 948.06, Florida Statutes (1995), is sufficiently analogous to the Wisconsin regulation at issue in *Griffin v. Wisconsin,* 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987), so as to make the holding in *Griffin* controlling here. In *Griffin,* the U.S. Supreme Court upheld a search of a probationer's residence, stating, "The search of Griffin's residence was 'reasonable' within the meaning of the Fourth Amendment because it was conducted pursuant to [Wisconsin's] valid regulation governing probationers." *Id.* at 880. The Wisconsin law in question there put probationers in the legal custody of the State Department of Health and Social Services and specifically rendered them "subject...to...conditions set by the court and rules and regulations established by the department." Wis. Stat. § 973.10(1) (1985–86). One of the Department's regulations explicitly permitted any probation officer to search a probationer's home without a warrant as long as his supervisor approved and as long as there were "reasonable grounds" to believe contraband was present -- including any item that the probationer was not allowed to possess under the probation conditions. Wis. Admin. Code HSS §§ 328.21(4), 328.16(1) (Dec. 1981). Wisconsin's rule provided that the officer should consider a variety of factors in determining whether "reasonable grounds" existed, among which were information provided by an informant, the reliability and specificity of that information, the reliability of the informant (including whether the informant had any incentive to supply inaccurate information), the officer's own experience with the probationer, and the "need to verify compliance with rules of supervision and state and federal law." *Id.* § 328.21(7). Another regulation made it "a violation of the terms of probation to refuse to consent to a home search." *Griffin,* 483 U.S. at 870–71.

Unlike Wisconsin's statutory scheme, *see* Wis. Admin. Code HSS §§ 328.21(4), 328.16(1) (Dec. 1981), Florida's statutes contain no scheme expressly authorizing or regulating the authority of probation officers or supervisors to conduct a probationary search when it is supported by "reasonable grounds." Rather, a probation officer's right to search is based on our holding in *Grubbs,* wherein we expressly limited the use of the fruits of such a search to probation proceedings. Accordingly, we find that the instant case is clearly distinguishable from *Griffin,* and under *Grubbs* the evidence obtained in the probationary search of Soca's trailer is not admissible against him in a new criminal proceeding.[3]

As this case illustrates, the *Grubbs* rule regulating probationary searches and the admissibility of evidence discovered therein has served as a workable framework for the DOC for over sixteen years, and we believe it remains a sound policy today. There has been no demonstration that our decision in *Grubbs* does not represent a proper balancing of the need to maintain effective supervision and control over probationers with the long held constitutional right of each citizen to be free from searches and seizures which violate the principles of Article I, § 12, of the Florida Constitution.

The *Grubbs* rule gives the State considerable leeway in investigating and monitoring probationers. When the State believes that a probationer is engaging in criminal behavior, the State may choose to inform probation officials of his alleged criminal conduct and place further responsibility for investigating his conduct with those officials. Apprised of this information, the probation supervisor may exercise his or her authority to search the probationer's person or residence for evidence that the probationer is violating the terms of his probation. Should the probation supervisor discover such evidence, it can be used against the probationer in a probation revocation proceeding.

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3 Of course, the Florida legislature is free to follow Wisconsin and adopt a statutory scheme regulating probation supervision which requires that probationary searches be supported by "reasonable grounds."

On the other hand, the State may choose to continue its investigation and attempt to secure a warrant to search the probationer's residence in compliance with traditional search and seizure standards under Article I, § 12, of the Florida Constitution. The State may also utilize the fact that the subject of its investigation is on probation as part of the circumstances establishing the probable cause necessary to secure a warrant.

CONCLUSION

We reaffirm *Grubbs,* quash *Soca,* and remand for further proceedings consistent with *Grubbs* and this opinion.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, KOGAN, HARDING and ANSTEAD, JJ., concur.

WELLS, J., dissents.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of Appeal — Direct Conflict of Decisions
Third District — Case No. 94-1214
(Monroe County)

Bennett H. Brummer, Public Defender
and Bruce A. Rosenthal, Assistant Public Defender,
Eleventh Judicial Circuit, Miami, Florida,
for Petitioner

Robert A. Butterworth, Attorney General and
Michael J. Neimand, Assistant Attorney General, Miami, Florida,
for Respondent

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT JANUARY TERM, 1995

JUAN SOCA,
Appellant,

vs. CASE NO. 94-1214

THE STATE OF FLORIDA,
Appellee.

Opinion filed June 7, 1995.

An appeal from the Circuit Court for Monroe County, Richard J. Fowler, Judge.

Bennett H. Brummer, Public Defender, and Bruce A. Rosenthal, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Michael J. Neimand, Assistant Attorney General, for appellee.

Before LEVY, GERSTEN, and GREEN, JJ.

LEVY, Judge.

The defendant appeals his conviction for cocaine possession, challenging the denial of his motion to suppress evidence found during a warrantless search of his residence by his probation officer. Because we find the search constitutional, we affirm.

I.

The defendant, Juan Soca, was on probation from two previous criminal convictions, and was living in a trailer in Monroe County with his parents. An investigator from the Monroe State Attorney's office obtained information from a confidential informant that the defendant was dealing in cocaine. The investigator set up a controlled purchase, at which the informant purchased cocaine from another individual while in the presence of the defendant. The investigator was nearby at the time, and was able to independently confirm that a purchase had been made. The informant later reported that the defendant was in possession of a large quantity of cocaine which had just come in from Miami. The investigator contacted the defendant's probation officer, and relayed what his investigation had revealed. The probation officer indicated that the defendant had recently undergone urinalysis, and had tested positive for cocaine. Based upon this information, the probation officer consulted with his supervisor, who instructed the officer to search the defendant's residence for contraband which might indicate that the defendant had violated the terms of his probation.

The probation officer and the investigator went to the defendant's trailer. The defendant was not home, but his father beeped him and he appeared within 20 minutes. The probation officer informed the defendant that he was going to search the trailer in order to monitor compliance with the terms of the defendant's probation, and the defendant told him to go ahead and search. The probation officer conducted the search himself; the investigator did not participate. The search revealed cocaine hidden under the floor of a hallway closet in the trailer. No search warrant was ever sought or obtained.

The defendant was charged with possession of over 400 grams of cocaine, in violation of Florida Statutes section 893.135. He moved to suppress the cocaine, arguing that the search of his trailer was warrantless and unconstitutional. In his motion, the defendant admitted that the evidence found during

the search could be used against him in a probation revocation proceeding, but argued that it could not be used to support the independent criminal charge of cocaine possession.

The defendant's motion was denied. The trial court found that the probation officer had a reasonable suspicion that contraband would be found in the trailer. Therefore, the trial court concluded that the search was legal, considering the defendant's probationary status, as well as the other circumstances of the case. The defendant was later convicted by a jury, and sentenced to 15 years imprisonment. He subsequently pled guilty to two counts of violating probation, and was sentenced to one year on each violation, with all sentences to run concurrently. The defendant now appeals, challenging only the trial court's denial of his motion to suppress.

II.

The legality of this search is governed by Article I, § 12 of the Florida Constitution, which deals with searches and seizures. As amended by the electorate in 1982, Article I, § 12 requires us to follow the United States Constitution's Fourth Amendment, as interpreted, in all past and future decisions, by the United States Supreme Court. *See Perez v. State,* 620 So. 2d 1256, 1258 (Fla. 1993); *Bernie v. State,* 524 So. 2d 988, 990–91 (Fla. 1988). Article I, § 12 is to be interpreted in conformity with the Fourth Amendment, and may not be read to provide any greater protections. *See* Art. I, § 12, Fla. Const.; *Jones v. State,* 648 So. 2d 669, 674 (Fla. 1994); *Perez,* 620 So. 2d at 1258; *Bernie,* 524 So. 2d at 990–91. "Indeed, an exclusionary rule that was once constitutionally mandated in Florida can now be eliminated by judicial decision of the United States Supreme Court." *Bernie,* 524 So. 2d at 991. However, where the United States Supreme Court has not ruled on a particular search and seizure issue, it is appropriate to rely upon previous Florida cases, *see State v. Cross,* 487 So. 2d 1056, 1057 (Fla.), *cert. dismissed,* 479 U.S. 805, 107 S. Ct. 248, 93 L. Ed. 2d 172 (1986), and cases from other

jurisdictions, *see Jones,* 648 So. 2d at 674. With this structure in mind, it is necessary to briefly review, in chronological order, the caselaw upon which the State and the defendant rely.

III.

In *Grubbs v. State,* 373 So. 2d 905 (Fla. 1979), the Florida Supreme Court found unconstitutional, under the old version of Article I, § 12, a condition of probation which required the probationer to consent to a warrantless search of his home at any time by any law enforcement officer. *Grubbs,* 373 So. 2d at 910. In discussing the issue, the *Grubbs* court distinguished situations where evidence was sought to be used in a probation revocation proceeding from situations where evidence was sought to be used to support a new, independent criminal charge. With respect to probation revocation proceedings, *Grubbs* held that "[t]he search of a probationer's person or residence by a probation supervisor without a warrant is, in our view, a reasonable search and absolutely necessary for the proper supervision of probationers." *Grubbs,* 373 So. 2d at 909. However, with respect to new criminal charges, *Grubbs* held that ordinary search and seizure law applied, although a probationer's status could be taken into account in making a probable cause determination. *Grubbs,* 373 So. 2d at 910. Thus, the result of *Grubbs* was to allow certain evidence, which would be excluded from a substantive case because it was illegally seized, to be nonetheless admitted in a probation revocation proceeding.

In *State v. Dodd,* 419 So. 2d 333 (Fla. 1982), the Florida Supreme Court further clarified that under the old version of Article I, § 12, the exclusionary rule applied equally to probation revocation proceedings as it did to regular prosecutions: "A person's status as a probationer may be taken into consideration in determining whether a search or seizure is unreasonable for constitutional purposes, but in *Grubbs* this Court unequivocally repudiated the notion that the Article I, § 12 exclusionary rule may simply be ignored at a probation

revocation hearing." *Dodd,* 419 So. 2d at 335 (footnote omitted). *Dodd* therefore left intact the holding of *Grubbs* that "a warrantless search of a probationer's person or residence by a probation supervisor is valid to the extent that the evidence discovered is used only in probation violation proceedings." *Grubbs,* 373 So. 2d at 907.

Shortly after the decision in *Dodd,* the previously mentioned amendment to Article I, § 12 was adopted. The amendment became effective January 4, 1983.

Three years later, the Florida Supreme Court held that *Dodd* was still controlling law in regards to the admissibility of illegally obtained evidence at a probation revocation hearing. *See Cross,* 487 So. 2d at 1058. In holding that *Dodd* was still controlling precedent, the Florida Supreme Court pointed out that there was no United States Supreme Court precedent on the issue. *Cross,* 487 So. 2d at 1057.

Subsequent to *Cross,* however, the United States Supreme Court issued its decision in *Griffin v. Wisconsin,* 483 U.S. 868, 107 S. Ct. 3164, 97 L. Ed. 2d 709 (1987). In *Griffin,* a probationer's home was searched by probation officers (accompanied by police) after a probation officer received information from police that the probationer had contraband in his home. *Griffin,* 483 U.S. at 871. The search was conducted pursuant to a Wisconsin statute which allowed a warrantless search of a probationer's home if there were "reasonable grounds" to believe that contraband was present. *Griffin,* 483 U.S. at 870–71. A gun was found, the probationer was charged with possession of a gun by a felon, and the probationer moved to suppress the gun. The motion was denied, and the probationer was convicted. *Griffin,* 483 U.S. at 872. On review, the United States Supreme Court found that Wisconsin's statutory scheme for the supervision of probationers was constitutional. The Court stated that there had been no constitutional infringement because the search of the probationer's residence was conducted pursuant to a constitutional, statutory system for monitoring probation-

ers. *Griffin,* 483 U.S. at 873. The search was approved despite the absence of either probable cause or a warrant. The Court explicitly refrained, however, from holding that *all* probationer searches based upon "reasonable grounds" were valid. *Griffin,* 483 U.S. at 880. The validity of the search was tied to the validity of the statutory system for monitoring probationers. It is from these precedents that both sides construct their arguments.

IV.

The defendant argues that *Griffin* is inapplicable to this case because the United States Supreme Court only approved the search in that case because of Wisconsin's regulatory scheme, and, he further argues, there is no such similar scheme in Florida. Accordingly, the defendant argues that this case is controlled by *Grubbs,* and that the cocaine was only admissible in a probation revocation proceeding, but not in this new, substantive criminal case. In support of this contention, the defendant relies upon the post-*Griffin* case of *Braxton v. State,* 524 So. 2d 1141 (Fla. 2d DCA 1988). In *Braxton,* the defendant was on community control when his home was searched without a warrant and a gun was found. Citing *Grubbs,* the Second District held that the gun should have been suppressed because "the product of a warrantless search of a probationer's home is not admissible to prove a new criminal offense." *Braxton,* 524 So. 2d at 1141.

The State argues that the search herein was reasonable and should be upheld under *Griffin,* even though Florida does not have as detailed a statutory scheme regulating probation supervision as was upheld in *Griffin.* The State specifically contends that because probation supervision is a "special need" situation, a warrantless search is permissible. The State further contends that the statute which authorizes a warrantless arrest of a probationer (section 948.06) also supports a warrantless search of a probationer under *Griffin.*

V.

The defendant has conceded that the cocaine was admissible for purposes of a probation revocation hearing. Consequently, the only issue is whether the cocaine was admissible on the new criminal charges. Therefore, pursuant to Article I, § 12 (as amended), we must look to the United States Supreme Court precedents. We agree with the State that the controlling precedent is *Griffin,* and pursuant thereto, we find that the search conducted in this case was constitutional.

In conducting our *Griffin* analysis, we are not limited to consideration of only the statutes and administrative regulations. Rather, we may engage in a broader analysis of all legal authority, including applicable state caselaw and the defendant's probation conditions, which may serve to provide a regulatory framework for a search of a probationer by a probation officer. *See United States v. Giannetta,* 909 F.2d 571 (1st Cir. 1990) (approving a search of a probationer's residence under *Griffin* where there was no regulatory scheme, but only a probation condition authorizing such a search); *United States v. Schoenrock,* 868 F.2d 289 (8th Cir. 1989) (upholding a warrantless search of a probationer's residence under *Griffin* based solely upon a condition of probation).

A.

First, we find Florida Statutes Section 948.06(1) to be pertinent. It states:

> Whenever within the period of probation...there are *reasonable grounds* to believe that a probationer...has violated his probation...in a material respect, any parole or probation supervisor may arrest or request any county or municipal law enforcement officer to arrest such probationer or offender without warrant....

§ 948.06(1), Fla. Stat. (1993) (emphasis added). This statute authorizes a warrantless arrest by a probation officer upon "reasonable grounds." While the statute does not explicitly

authorize a warrantless search, it does constitute a legislative endorsement of the "reasonable grounds" standard as a basis for an imposition upon a probationer's privacy. This "reasonable grounds" standard is *identical* to the standard approved as constitutional in *Griffin*. Moreover, section 948.06(1) constitutes an implicit approval of a search based upon "reasonable grounds" because the Legislature certainly was aware that an arrest by a probation officer would authorized a search of the probationer incident to arrest, *see United States v. Robinson*, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973), and might justify an inventory search, *see Illinois v. Lafayette*, 462 U.S. 640, 103 S. Ct. 2605, 77 L. Ed. 2d 65 (1983), or even a protective sweep of the premises, *see Maryland v. Buie*, 494 U.S. 325, 100 S. Ct. 1093, 108 L. Ed. 2d 276 (1990).

Second, Florida Statutes section 948.03 regulates the terms and conditions of probation, and states, "[t]he court shall determine the terms and conditions of probation...and may include among them the following, that the probationer...shall:...[p]ermit...[probation] supervisors to visit him at his home or elsewhere." § 948.03(1)(b), Fla. Stat. (1993). This statute is significant in two respects. First, it allows a visit to a probationer's home, which is obviously a necessary predicate to a search of the home, and would allow for the observation of any items in "plain view." In fact, just such a condition was a part of the defendant's probation in this case.[1] Second, the statute contains a grant of authority to sentencing judges to set special terms of probation. In this case, an additional condition of the defendant's probation was that the defendant "submit to urinalysis, breathalyzer or blood test[s] at any time requested by your probation officer." While nothing in the defendant's probation order specifically authorized a search of the defendant's residence, these two conditions — allowing a home visit and authorizing a drug test — provided the defendant's

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1 Because this condition is specifically enumerated in the statute, we would not consider the absence of such a condition from the defendant's probation order significant with respect to our *Griffin* analysis.

probation officer with an adequate framework within which to conduct the search at issue here, which was a search of the defendant's home for drugs. *Cf. Grubbs,* 373 So. 2d at 910 ("[w]e emphasize that the authority of probation supervisors and law enforcement officers to conduct warrantless searches of probationers in accordance with the views set forth in this opinion is not dependent upon a search condition expressly set forth in the order of probation"). Consequently, we find that the parameters derived from sections 948.06 and 948.03 provided a sufficient regulatory scheme so as to uphold the search in this case under *Griffin.* Additionally, the defendant has not contradicted the probation supervisor's testimony in this case indicating that Department of Corrections "regulations" were followed in conducting the search of the defendant's residence.

Third, *Grubbs* itself adds to the regulatory framework, for *Grubbs* specifically held that, "[t]he search of a probationer's person or residence by a probation supervisor without a warrant is, in our view, a reasonable search and absolutely necessary for the proper supervision of probationers." 373 So. 2d at 909. This statement has long-guided probation personnel in the conduct of their duties, and may well be the reason that submission to a residential search was not specifically included in the defendant's conditions of probation. In the immediate wake of *Grubbs,* courts of this state repeatedly approved of a condition of probation which required a probationer to consent to a search by his probation officer at any time, regardless of the justification for the search. *See Elkins v. State,* 388 So. 2d 1314 (Fla. 5th DCA 1980) (upholding a condition of probation to the extent it required the probationer to submit to a search of his residence at any time by his probation officer); *Smith v. State,* 383 So. 2d 991 (Fla. 5th DCA 1980) (same); *Jessee v. State,* 375 So. 2d 881 (Fla. 2d DCA 1979) (same). If such a condition is permissible, then it is also permissible for a search to be conducted, absent such a condition, when the probation officer has "reasonable grounds" to believe the search will reveal evidence of a probation violation. Moreover, when such a search is based upon rea-

sonable grounds, the fruits of the search are admissible in any subsequent legal proceeding.[2]

Therefore, we find that the applicable statutes, the conditions of the defendant's probation, and *Grubbs* itself provided an adequate framework under *Griffin* to validate the search. Consequently, the defendant's residence was properly searched without a warrant by his probation officer, and the evidence found in the search was properly admitted in a new criminal proceeding, if the officer had reasonable grounds to believe that the search would reveal evidence of a material violation of probation.

B.

We now address the legality of the search in this case. Several facts gave the probation officer reasonable grounds to search the defendant's residence. First, the officer had received detailed information from a confidential informant that the defendant had been dealing cocaine. Second, the confidential informant made a controlled purchase of cocaine while in the defendant's presence, and the investigator was able to independently confirm this. Third, the informant later informed authorities that the defendant had just received a large amount of cocaine from Miami. Fourth, the probation officer was aware that the defendant had recently had a urinalysis test which was positive for cocaine. These circumstances were more than sufficient to give the probation officer "reasonable grounds" to believe that the search would reveal evidence of a violation of probation. Therefore, the search was legal, and the cocaine which was discovered during it was properly admitted below.

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2 We distinguish *Braxton v. State*, 524 So. 2d 1141 (Fla. 2d DCA 1988). That case apparently involved a search conducted by officers other than the defendant's community control officer, and the opinion did not engage in a *Griffin* analysis.

VI.

In conclusion, we hold that the defendant's motion to suppress was properly denied. The defendant's conviction and sentence are affirmed.

IN THE CIRCUIT COURT OF THE
16TH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA IN AND FOR
MONROE COUNTY

STATE OF FLORIDA,
Plaintiff,

vs. CASE NO.: 93-1231-CF

JUAN SOCA,
Defendant.

ORDER DENYING MOTION TO SUPPRESS

THIS CAUSE, having come before the Court on Defendant's Motion to Suppress. This Court, after reviewing the motion, the record and the applicable law, finds as follows:

1. Defendant seeks to suppress the papers, effects, contraband and items seized on October 2, 1993 from the premises located at #89 Pearl Trailer Park, Stock Island, Monroe County, Florida. Defendant challenges the probation officer's authority to conduct a warrantless search of his quarters and claims that the items were seized unlawfully in violation of the search and seizure provision of the United States and Florida constitutions. Defendant asserts that even if the warrantless search of Defendant's premises was a valid exercise of the probation officer's authority that any contraband seized as a result could not be used for new charges. Instead, he argues, that it would only go to the issue of a violation of probation.

2. The Court heard testimony concerning the facts surrounding this incident. Specifically, two probation officers, in the company of two Monroe County State Attorney investigators, went to the home address of

Defendant after receiving information from a known reliable confidential informant that Defendant was dealing large quantities of cocaine and possessed a large quantity of cocaine.

According to testimony at the hearing, defendant tested positive in a urinalysis test on or about September 16 or 17th and failed to report to his officer on October 1st. Lisa Kaminsky testified that defendant was supervised by one of the searching officers, Mr. Quad, although the two had not met prior to the search of the trailer. It appears that several officers had been assigned to the Defendant's case prior to the appointment of Mr. Quad.

3. The probation officers and investigators found that the Defendant was not present when they arrived at #89 Pearl Trailer Park. The officers instructed Defendant's father to summon Defendant by beeper. Upon doing so, Defendant arrived at the trailer. Whereupon, the probation officers notified him that they wanted to search his quarters and effects pursuant to the rules and regulations of his probation. Defendant agreed to the search and allowed entry.

4. Prior to that entry, the probation officers and investigators did not obtain a search warrant. Upon a search of the quarters, they discovered a concealed hiding place at the bottom of a hall closet which contained cocaine.

5. As to the first issue, the State Attorney argued that the probation officer was authorized in conducting a reasonable search of the premises. The defense argued that the probation officer was not authorized to conduct a search. In his supplemental memorandum, the defense argues that the fruits of the probation search cannot be used as evidence to support a new substantive offense and that a probation search is limited by its scope to items seized in plain view.

F.S. § 948.03(1)(b) provides that the Court shall determine the terms and conditions of probation or community control and may include, among others, that probationers shall permit such supervisors to visit him at his home or elsewhere. In this case, at the time of the incident, Defendant was subject to the terms of his probation pursuant to another case.

In *Grubbs v. Florida,* 373 So. 2d 905 (S. Ct. 1979), the Supreme Court held that it would be impossible to properly supervise individuals on probation if the probation supervisor has no authority to enter the living quarters of his probationer and to permit a reasonable search of his person and quarters by the supervisor. Thus, as a function of supervision, a probation officer is entitled to enter into private premises and to conduct inquiries and a reasonable search.

In *Croteau v. State,* 334 So. 2d 577 (S. Ct. 1976), the Supreme Court held that a probation officer had the authority to enter the living quarters of a probationer and to conduct a warrantless search. The court ruled that evidence *illegally* seized would be admissible in probation revocation hearings but not to prove a new criminal offense. However, in *Croteau,* the case did not deal with revocation but with prosecution for a new offense.

At the time that *Croteau* was decided, the exclusionary rule did not apply to violation of probation cases. Therefore, illegally obtained evidence was admissible in probation violation cases. In *Croteau,* the Supreme Court noted that illegally obtained evidence would not be admissible to prove a new criminal offense. Illegally seized evidence would be inadmissible because the exclusionary rule would exclude it. However, this does not mean that legally seized evidence in a probationary search would not be admissible to prove a new criminal offense.

In *State v. Dodd,* Fla., 419 So. 2d 333 (1982), the Supreme Court reiterated that *if evidence was obtained in violation of Article I, § 12, of the Florida Constitution,* by means of a search or seizure that was unreasonable under all the circumstances, *then* such evidence would not be admissible in evidence regardless of the type or nature of the proceeding offered. (Emphasis added.) The Supreme Court held that the Florida constitutional exclusionary rule for evidence obtained by means of searches or seizures that are unreasonable under Article I, § 12, is applicable in probation revocation proceedings.

In *State v. Cross,* 487 So. 2d 1056 (Fla. 1986), the Supreme Court held that *illegally seized* evidence was inadmissible in probation revocation hearing even after amendments to state prohibition against unlawful searches and seizures. In that case, the Supreme Court agreed with the lower court that the evidence was seized illegally. However, the Florida Supreme Court declined to interpret the amendment to Article I, § 12 because the United States Supreme Court had not ruled on the admissibility of such evidence in revocation of probation hearings.

In this case, the probation officers and investigators were authorized to enter the premises and to conduct a reasonable search pursuant F.S. 948.03(b)(1) and pursuant to the terms of his Conditions of Probation previously signed by Defendant.

As to the scope of the search, the probation officers obtained valid consent to search so the probation officers would be authorized to conduct a reasonable search which would include closets in the common area. Upon obtaining voluntary consent, the probation officers are not limited to a plain view search. See: *Dearth v. State,* 390 So. 2d 108 (Fla. App. 4th DCA 1980) (Probationers may only be subjected to reasonable searches by his

probation officer or other police officers considering the circumstances prevailing at the time of the search); *Ray v. State*, 387 So. 2d 995 (Fla. App. 4th DCA 1980) (The test for admissibility under the Florida Constitution is not whether the evidence is being offered in a revocation proceeding or a criminal trial, but rather whether the evidence was "properly or reasonably obtained" under the circumstances).

6. Defendant argues that the evidence seized was in violation of the Fourth and Fourteenth Amendments to the United States Constitution, and to the rights enumerated in the Florida Constitution including, but not limited to, Article I, § 12. A review of the law in Florida reveals that a probationer is not divested of his rights either under the Fourth Amendment of the United States Constitution or Article I, § 12 of the Florida Constitution.

   Defendant is incorrect in his assertion that the evidence was seized unlawfully. As outlined above, a probation officer is entitled to conduct a *reasonable* search. A review of the testimony reveals that the probation officers and investigators received information from a known reliable confidential informant. The search was authorized by the probation supervisor Lisa Kaminsky. After they reached the premises, they notified probationer Defendant that they intended to conduct a search pursuant to the conditions of his probation. The search was based on the probability or likelihood that contraband would be found on the premises. The probation officers did not coerce the Defendant nor was there a show of force on their part. And, Defendant assented to the search.

   The Court finds that Defendant freely and voluntarily consented to this search. *See: Schneckloth v. Bustamente*, 412 U.S. 218, 93 S.Ct. 2041, 36 L. Ed. 2d 854 (1973).

At the hearing on these motions, the State cited to *Griffin v. Wisconsin,* 483 U.S. 868, 97 L. Ed. 2d 709, 107 S. Ct. 3164 (1987), where the Supreme Court upheld a warrantless search of a probationer's home pursuant to a state regulation. The Court held that the search was reasonable because of the state's special need for adequate supervision over its probationers. Although probationers have a legitimate expectation of privacy in their homes, the Supreme Court noted that the ongoing supervisory and nonadversarial relationship justified diminished Fourth Amendment protection. The Court also noted that a warrant requirement would burden this scheme by (1) forcing a magistrate rather than the probation officer to judge how close the supervision of the probationer should be, (2) making it more difficult for probation officers to respond quickly to evidence of misconduct, (3) diminishing deterrent effect of a probationer's search, and (4) impairing the deterrent effect of the supervisor-probationer relationship. *Griffin,* at pg. 874–75.

Therefore, in limited circumstances, the Supreme Court has held that special needs of the state, beyond the normal needs of law enforcement, permit the state to dispense with both the warrant and probable cause requirements. In those cases, the Supreme Court evaluates the extent to which the requirements interfere with the unique government interests at stake and balances the interests against the degree of intrusion upon individual privacy.

In their memorandum following the motion hearing, the defense argued that *Griffin* has no bearing on this matter and is limited by its own facts. The defense summarized that the Supreme Court only upheld the Wisconsin statute which permitted a warrantless search of probationer's home on less than probable cause. However, the Supreme Court did more than just upholding Wisconsin's statute. The Supreme Court up-

held the reasonable grounds standard of Wisconsin's search regulation as satisfying the reasonable ground standard of the Federal Constitution. The Supreme Court held that the search in Griffin's home satisfied the demands of the Fourth Amendment because it was carried out pursuant to a regulation that satisfied the Fourth Amendment's reasonableness requirement.

In *Griffin,* the Wisconsin regulation permitted any probation officer to search a probationer's home without a warrant as long as his supervisor approved and as long as there was reasonable grounds to believe the presence of contraband.

In the case at bar, as outlined above, F.S. § 948.03(1)(b) authorizes probation officers to visit homes. The Florida Courts have interpreted this statute to inherently include the right to permit a *reasonable* search of his living quarters by a probation officer.

In *Griffin,* the Wisconsin regulation further provided that an officer should consider a variety of factors to determine whether reasonable grounds exist, including information provided by an informant, the informant's reliability, the officer's experience with the probationer, and the need to verify compliance with the rules of probation and the law. Another regulation made it a violation of the terms of probation to refuse to consent to a home search.

In this case, the Florida statute does not include a reasonableness limitation. However, the absence of a reasonableness limitation is not objectionable so long as the decision to search was in fact narrowly and properly made on the basis of reasonable suspicion. See: *U.S. v. Giannetta,* 909 F. 2d 571 (1st Cir. 1990) at page 576.

The Supreme Court has defined reasonable suspicion as a reasonable belief based on specific and articulable facts rather than a mere inchoate and uparticularized suspicion on hunch. *Giannetta* at pg. 576.

The specific and articulable facts are outlined on pages four and five of this order. The officer testified that the search was based on the probability or likelihood that contraband would be found on the premises. Therefore, the Court finds that the probation officers had a reasonable suspicion that contraband was to be found at the premises.

Further, defense pointed out that this Court should pay close attention to the holding of the 5th Circuit Court of Appeals in *United States v. Robinson,* 857 F. 2d 1006 (5th Cir. 1988) where that Court interpreted *Griffin* as specifically limited to upholding the validity of the State regulation.

However, in *Giannetta, supra.,* the First Circuit Court of Appeals was not persuaded when Giannetta attempted to distinguish *Griffin* similarly by arguing that a regulatory scheme did not exist in his case. The First Circuit did not read *Griffin* as approving only probation searches conducted pursuant to a legislative or administrative framework. The Court noted that such regulatory framework provides guidance to probation officers and furnishes search constraints. However, the Court also noted that similar guidance and constraints are provided where a sentencing judge narrowly tailors the need for and scope of any probation search conditions to the circumstances of the individual case. The Court concluded that in such a setting that probation searches based on reasonable suspicion are supported by the same "special needs" justifications and have the same characteristics of reasonableness as the search upheld in *Griffin.*

This Court articulated the same justification in its order in *State v. Munro and Smith,* Case # 89-52 CF 32 dated May 3, 1989 where the Court found a special need beyond that of normal law enforcement to have justified a departure from the usual warrant and probable cause requirement.

Therefore, applying *Griffin,* the Court finds that the search conducted by officers was reasonable based on the circumstances of this case and that the warrantless search was reasonable within the meaning of the Fourth Amendment because it was conducted pursuant to statutory authority and caselaw that was itself a reasonable response to the special needs of the probation system.

See also: U.S. v. Schoenrock, 868 F. 2d 289, 192-92 (8th Cir. 1989) (Fourth Amendment not violated by warrantless searches of probationer's home because searches designed to prevent future alcohol and drug abuse); and *U.S. v. Richardson,* 849 F. 2d 439, 442 (9th Cir.) (Fourth Amendment not violated by warrantless search of defendant's house and car by police with permission of probation officer, even when probation officer not present during search, as long as search served probationary goals), *cert. denied,* 488 U.S. 866 (1988).

The Florida Supreme Court is bound to follow the United States Supreme Court's interpretations of the Fourth Amendment and to provide no greater protection than those interpretations. U.S.C.A. Const. Amend. 4; F.S.A. Const. Art. 1, Sec. 12. *Perez v. State,* 620 So. 2d 1256 (Fla. 1993).

7. Last of all, the defense cites to *Braxton v. State,* 524 So. 2d 1141 (Fla. App. 2 Dist. 1988) where the Second District held that the product of a warrantless search of a probationer's home is not admissible to prove a new criminal offense. However, in *Braxton,* the Second Dis-

trict agreed with the lower court that the evidence there was seized in violation of the Fourth Amendment.

The defense asserts that *Braxton* stands for the proposition that evidence obtained from a warrantless search of probationer's home should never be used in a new criminal offense. However, as outline herein before, this does not mean that *legally* seized evidence from a probationary search would not be admissible to prove a new criminal offense Therefore, this argument is without merit.

WHEREFORE, IT IS ORDERED AND ADJUDGED that Defendant's Motion to Suppress is hereby DENIED.

DONE AND ORDERED, in chambers, in Key West, Monroe County, Florida, this the 29 day of Aug. 1994.

Nunc Pro Tunc: 02-28-94

/s/ Richard J. Fowler
CIRCUIT JUDGE

Copies provided to:
Alvin Entin
State Attorney

CONDITIONS OF PROBATION

It is further ordered that you shall comply with the following conditions of probation:

1. Not later than the fifth day of each month, you will make a full and truthful report to your probation officer on the form provided for that purpose.

2. You will pay to the State of Florida the amount of Forty Dollars [$40.00] per month toward the cost of your supervision unless otherwise waived in compliance with Florida Statutes.

3. You will not change your residence or employment or leave the County of your residence without first procuring the consent of your probation officer.

4. You will neither possess, carry or own any weapons or firearm without first securing the consent of your probation supervisor.

5. You will live and remain at liberty without violating any law. A conviction in a court of law shall not be necessary in order for such a violation to constitute a violation of your probation.

6. You will not use intoxicants to excess: nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.

7. You will work diligently at a lawful occupation and support any dependents to the best of your ability as directed by your probation officer.

8. You will promptly and truthfully answer all inquiries directed to you by the Court of the Probation Officer, and allow the Officer to visit in your home, at your

employment site or elsewhere, and you will comply with all instructions he may give you.

9. You will submit to urinalysis, breathalyzer or blood test at any time requested by your probation officer or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs or controlled substances.

I understand the standard conditions of probation as stated hereinabove and I further understand that there may be special conditions of probation which apply to my case but are not stated herein. Receipt of a copy of the standard conditions of probation applicable to me is hereby acknowledged.

/s/ Date 3/23/93

Defendant /s/ Juan Soca

[revised 1/90]

ORIGINAL

Supreme Court, U.S.
FILED
AUG 30 1996
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

CASE NO. 96-137

THE STATE OF FLORIDA,

Petitioner,

vs.

JUAN SOCA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION

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13pp

QUESTION PRESENTED

WHERE THE AUTHORITY OF A PROBATION OFFICER IN FLORIDA, AS CONSTRUED BY THE FLORIDA SUPREME COURT AS THE FINAL ARBITER OF STATE LAW, TO CONDUCT A WARRANTLESS SEARCH IS NOT OTHERWISE CONFERRED BUT ARISES ONLY FROM THE FLORIDA SUPREME COURT'S OWN PRIOR DECISION IN *GRUBBS v. STATE*, 373 So. 2d 905 (Fla. 1979), WHICH DECISION LIMITS THE RESULTS OF SUCH SEARCHES TO PROBATION REVOCATION HEARINGS ONLY, WHETHER THE HOLDING BELOW RECOGNIZING THE CONTINUING VITALITY OF SUCH STATE-LAW STRUCTURE PRESENTS ANY FEDERAL CONSTITUTIONAL ISSUE OR BASIS FOR EXERCISE OF CERTIORARI JURISDICTION?

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF CASE 1

REASONS FOR DENYING THE WRIT

I.

THE DECISION BELOW DOES NOT PRESENT ANY FEDERAL CONSTITUTIONAL ISSUE. 4

II.

EVEN IF THERE WERE A BASIS FOR GRANT OF CERTIORARI, THIS CASE IS NOT WORTHY OF SUCH REVIEW BOTH BECAUSE NO OTHER JURISDICTION UTILIZES THE BIFURCATED PROBATION SUPERVISION SCHEME EXTANT IN FLORIDA, AND BECAUSE, IF ADOPTED, THE PETITIONER'S ARGUMENT CONSTITUTES A LOGICAL CIRCULARITY WHICH WOULD RESULT IN NULLIFICATION OF ANY AUTHORITY OF A FLORIDA PROBATION OFFICER TO CONDUCT A WARRANTLESS SEARCH, OR ALTERNATIVELY, WOULD PROVIDE FOR THE SAME RESULT AS REACHED BELOW BY VIRTUE OF THE FLORIDA CODIFICATION OF THE *GRUBBS* RULE. 7

CONCLUSION 9

TABLE OF AUTHORITIES

PAGE

Elkins v. State
388 So. 2d 1314 (Fla. Dist. Ct. App. 1980) 5

Grubbs v. State
373 So. 2d 905 (Fla. 1979) 4, 5, 7, 8

Griffin v. Wisconsin
483 U.S. 868 (1987) 4, 7, 8

Smith v. State
383 So. 2d 991 (Fla. 5th DCA 1980) 5

Soca v. State
673 So. 2d 24 (Fla. 1996) 5, 7, 8

OTHER AUTHORITIES

FLORIDA RULE OF APPELLATE PROCEDURE

9.330 5

FLORIDA CONSTITUTION

Article I, Section 12 ..... 4, 8

STATEMENT OF CASE

Not unexpectedly, the petitioner has placed undue emphasis on certain parts of the decision below, and ignored other pertinent, but jurisdictionally adverse, portions.

For nearly two decades, the State of Florida has utilized a unique, bifurcated system of probation supervision; a probation officer may conduct a warrantless, non-exigent search of a probationer without any particular quantum of justification, but the results of any warrantless probation search are admissible against the probationer only in a violation hearing, and not in a new criminal case. *Grubbs v. State*, 373 So. 2d 905, 907, 909-10 (Fla. 1979). The authority of a probation officer to conduct a warrantless search of a probationer has been held by the Florida Supreme Court, as the final authority on issues of Florida law, *see, e.g., Griffin v. Wisconsin*, 483 U.S. 868, 875-76 (1987), to be conferred *not* by statute or other provision of state law but to arise *only* from the court's own *Grubbs* holding. *Soca v. State*, 673 So. 2d 24, 28 (Fla. 1996). This structure of state law has been administratively codified. *Id.* at 26 & n.2.

A state attorney's office investigator, suspecting the defendant, who was on probation, of involvement in dealing in cocaine, and aware of the foregoing structure of state law, made, as the Florida Supreme Court found, "a conscious choice *not* to seek a warrant and instead [to] allow [a] search to be conducted pursuant to the supervisory authority granted probation supervisors in *Grubbs*." *Soca, id.* at 25. The search by probation officers (Florida Department of Corrections officers) yielded cocaine hidden in the defendant's residence, which constituted the basis for a revocation (pursuant to plea) of the defendant's probation. *Id.* The propriety of revocation was not at issue. *Id.* at 25-

26, 28.

In reversing the lower court's holding that the evidence was admissible against the defendant in a new criminal case, the Florida Supreme Court held as a matter of state law that the "probation officer's right to search is based on our holding in *Grubbs*, wherein we expressly limited the use of the fruits of such a search to probation proceedings. Accordingly, we find that the instant case is clearly distinguishable from *Griffin* [*v. Wisconsin*], and under *Grubbs*, the evidence obtained in the probationary search of Soca's trailer is not admissible against him in a new criminal proceeding." *Id.* at 28. The court noted that the Florida legislature was free to follow Wisconsin and adopt a scheme to provide for warrantless probation searches supported by "reasonable grounds." *Id.* at 28 n.3.

The court further observed:

> As this case illustrates, the *Grubbs* rule regulating probationary searches and the admissibility of evidence discovered therein has served as a workable framework for the DOC for over sixteen years, and we believe it remains a sound policy today. There has been no demonstration that our decision in *Grubbs* does not represent a proper balancing of the need to maintain supervision and control over probationers with the long-held constitutional right of each citizen to be free from searches and seizures which violate the principles of article I, section 12, of the Florida Constitution.
>
> The *Grubbs* rule gives the State considerable leeway in investigating and monitoring probationers. When the State believes that a probationer is engaging in criminal behavior, the State may choose to inform probation officials of his alleged criminal conduct and place further responsibility for investigating his conduct with those officials. Apprised of this information, the probation supervisor may exercise his or her authority to search the probationer's person or residence for

evidence that the probationer is violating the terms of his probation. Should the probation supervisor discover such evidence, it can be used against the probationer in a probation revocation proceeding.

On the other hand, the State may choose to continue its investigation and attempt to secure a warrant to search the probationer's residence in compliance with traditional search and seizure standards under article I, section 12, of the Florida Constitution. The State may also utilize the fact that the subject of its investigation is on probation as part of the circumstances establishing the probable cause necessary to secure a warrant.

Id.

REASONS FOR DENYING THE WRIT

I.

THE DECISION BELOW DOES NOT PRESENT ANY FEDERAL CONSTITUTIONAL ISSUE.

The decision below represents an affirmation by the Florida Supreme Court of the continuing vitality of its 1979 *Grubbs* decision conferring authority upon probation officers to conduct (suspicionless) warrantless searches, and providing the uses of such evidence obtained thereby. The Petitioner's attempt to interpose the Florida Constitution, Article I, Section 12 Fourth Amendment conformity clause and *Griffin v. Wisconsin* as presenting a basis for invalidation represents a significant misreading of both *Griffin* and the lower court's decision.

In *Griffin v. Wisconsin*, this Court held constitutional under the Fourth Amendment a state scheme, the question of compliance with which this Court expressly deferred to the Wisconsin Supreme Court as the final authority on issues of Wisconsin law, which authorized warrantless searches of probationers on reasonable grounds. 483 U.S. at 872-76, 880. However, authority of a probation officer in Florida to conduct a warrantless search cannot come from the mere approval in *Griffin* by this Court of the Wisconsin scheme; it must be provided as a matter of state law in the first instance. Contrary to the petitioner's attempt to bootstrap an analogy to Wisconsin, the Florida Supreme Court has held that statutory authority of a probation officer to conduct a warrantless search is *not* otherwise conferred, but arises *only* from the court's 1979 *Grubbs* decision, and the uses of evidence obtained must comport therewith, i.e., such evidence is admissible only in a

probation revocation hearing. *Soca*, 673 So. 2d at 28; *Grubbs*, 373 So. 2d at 907, 909-10. Thus, critical points of distinction between Florida and Wisconsin are that in Florida the authority to conduct a warrantless probation search at all arises only from judicial (Florida Supreme Court) decision and is limited thereby, and, further unlike Wisconsin, such a search may be suspicionless. *See, e.g., Elkins v. State*, 388 So. 2d 1314 (Fla. Dist. Ct. App. 1980); *Smith v. State*, 383 So. 2d 991 (Fla. 5th DCA 1980).

The Florida Supreme Court's mere discussion below of federal constitutional jurisprudence in the course of rejecting the petitioner's argument certainly does not convert the decision into one of federal constitutional law; to the contrary, the Florida Supreme Court was careful to consider the unique state-law source, nature and use limit of a warrantless search by a probation officer. *Soca, id.* at 27-28. This decision rests on such state-law grounds, and does not present either a sufficient or an appropriate basis for certiorari.

The petitioner's implicit awareness of the central state-law grounding of the decision below is manifested by its election to bypass rehearing below, as authorized by Florida Rule of Appellate Procedure 9.330, which allows the filing of "[a] motion for rehearing [or] clarification . . . within 15 days" of a decision, and to instead opportunistically seize upon certain language of the decision which does not actually comprise the *ratio decidendi.* The petitioner has utterly failed to address, or even acknowledge, the codification of *Grubbs* probation search authority and admissibility-limitation, which codification was also relied upon by the Florida Supreme Court, *Soca, id.* at 26 & n.2, and which would constitute an entirely separate state-law basis for the decision. Both the nature of the *Grubbs* rule, and

its codification, distinguish this case from the few circuit court of appeals cases relied on by the petitioner.

II.

EVEN IF THERE WERE A BASIS FOR GRANT OF CERTIORARI, THIS CASE IS NOT WORTHY OF SUCH REVIEW BOTH BECAUSE NO OTHER JURISDICTION UTILIZES THE BIFURCATED PROBATION SUPERVISION SCHEME EXTANT IN FLORIDA, AND BECAUSE, IF ADOPTED, THE PETITIONER'S ARGUMENT CONSTITUTES A LOGICAL CIRCULARITY WHICH WOULD RESULT IN NULLIFICATION OF ANY AUTHORITY OF A FLORIDA PROBATION OFFICER TO CONDUCT A WARRANTLESS SEARCH, OR ALTERNATIVELY, WOULD PROVIDE FOR THE SAME RESULT AS REACHED BELOW BY VIRTUE OF THE FLORIDA CODIFICATION OF THE *GRUBBS* RULE.

Florida, to the respondent's knowledge, is the only jurisdiction to utilize the carefully tailored, bifurcated scheme of probation supervision. Therefore, even if there were perceived to be a jurisdictional basis for certiorari, its exercise would affect, as far as the respondent can ascertain, no other jurisdiction in the United States. Moreover, it is extremely doubtful that even Florida would be affected, given the nature of the reasoning below. In *Griffin v. Wisconsin*, this Court held only that a regulatory scheme for authorization of warrantless probation searches upon reasonable grounds, the satisfaction of the scheme to be ascertained only by the state courts, satisfied the Fourth Amendment. *Id.* at 483 U.S. at 872-73, 880. It expressly left open the question of whether the Fourth Amendment would, in the absence of such a scheme, directly permit such warrantless searches upon reasonable grounds, *id.* at 872, 880, much less, as applicable herein to probation revocation proceedings, upon less than such grounds. *Soca, id.* at 28. The Florida Supreme Court has allowed warrantless or suspicionless searches, as a matter of supervisory authority of probationers, only upon the assumption that the results were

admissible in probation revocation proceedings alone. *Grubbs*, 373 So. 2d at 907, 909-10; *Soca*, 673 So. 2d at 28. This centrally and fatally undercuts the petitioner's facile assumption of once "lawfully" obtained, then good for all purposes. The Florida Supreme Court's conclusion of "lawfulness" of a warrantless search of a probationer by a probation officer is self-limiting and defining only with respect to revocation proceedings.

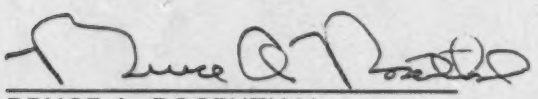
Put differently, the petitioner's argument represents a logical *ne exeat*. It seeks, under the conjunction of the Florida Constitution, Article I, Section 12 conformity clause and *Griffin v. Wisconsin*, to invalidate the Florida Supreme Court's decision in *Grubbs v. State*, but it is *Grubbs* which provides the very authority for probation officers to conduct a warrantless search at all in Florida. *Grubbs* is either of vitality or not, and, if it is, as held by the Florida Supreme Court, then there is no basis for disturbance of that court's decision. On the other hand, if *Grubbs* is not of vitality for the reasons the petitioner advances, then its nullification would remove any authority in Florida for a probation officer to conduct a warrantless search. Alternatively, nullification of *Grubbs* would leave unaffected the codification of its principle, *Soca*, *id.* at 26 & n.2, which codification would independently support (if not require) the same result as that reached below.

CONCLUSION

The decision below, and its central underpinning, *Grubbs v. State*, constitutes an exercise of the Florida Supreme Court's authority over probationers, and not a determination of federal constitutional jurisprudence. For that reason and others stated herein, the Petition for Writ of Certiorari to the Supreme Court of Florida should be denied.

Respectfully submitted,

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Supreme Court, U.S.
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No. 96-137

IN THE

Supreme Court of the United States

October Term, 1995

THE STATE OF FLORIDA,

Petitioner,

v.

JUAN SOCA

Respondent.

REPLY TO BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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QUESTION PRESENTED

WHEN CONTRABAND IS LAWFULLY SEIZED FROM A PROBATIONER, BASED ON A "SPECIAL NEEDS" SEARCH, IS THAT EVIDENCE ADMISSIBLE AGAINST THE PROBATIONER IN BOTH THE PROBATION REVOCATION HEARING AND THE TRIAL ON THE SUBSTANTIVE CRIMINAL CHARGE.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

REASONS FOR GRANTING THE WRIT 1

THE DECISION OF THE COURT BELOW WAS DECIDED ON FEDERAL GROUNDS AND NOT UPON ADEQUATE AND INDEPENDENT STATE GROUNDS 1

CONCLUSION 3

TABLE OF AUTHORITIES

Cases	*Page*
ASARCO Inc. v. Kadish, 490 U.S. 605, 109 S.Ct. 2037, 104 L. Ed. 2d 696 (1989)	2
Bernie v. State, 524 So. 2d 988 (Fla. 1988)	2
Perez v. State, 620 So. 2d 1256 (Fla. 1993)	2
State v. Lavazzoli, 434 So. 2d 321 (Fla. 1983)	2

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REASON FOR GRANTING THE WRIT

THE DECISION OF THE COURT BELOW WAS DECIDED ON FEDERAL GROUNDS AND NOT UPON ADEQUATE AND INDEPENDENT STATE GROUNDS.

The Respondent contends that the decision of the Supreme Court of Florida in the instant case rests on adequate and independent state law grounds and therefore this Court lacks jurisdiction over the cause. This position is totally devoid of merit since Florida's exclusionary rule is linked to the federal exclusionary rule and is not based on the independent protective force of state law.

In 1982, Article I, § 12 of the Florida Constitution, relating to search and seizure, was amended to include the "conform-

ity clause" which requires that the rights provided by said section be construed in conformity with the Fourth Amendment to the Unites States Constitution, as interpreted in all past and future decisions, by this Court. *Perez v. State,* 620 So. 2d 1256 (Fla. 1993). Florida's exclusionary rule is now the federal one which exists by judicial decisions and is controlled by decisions from this Court. *Bernie v. State,* 524 So. 2d 988 (Fla. 1988).

In *State v. Lavazzoli,* 434 So. 2d 321 (Fla. 1983) the Supreme Court of Florida for the first time addressed the impact that the amendment to Article I, § 12 of the Florida Constitution had on Florida's exclusionary rule. The Court recognized that prior to the amendment the right of a citizen of the State of Florida to be free from unreasonable searches and seizures was guaranteed independently of the similar protection provided by the Fourth Amendment to the United States Constitution. Under Article I, § 12 as it existed prior to the amendment, the Court stated that the courts of Florida were free to provide its citizens with a higher standard of protection from governmental intrusion than that afforded by the federal constitution. The reason for that position was that Florida's exclusionary rule was specifically articulated in the state constitution and was a part of Florida's organic law. The Court noted that the federal exclusionary rule is preeminently a rule of court. The Court then held the new amendment links Florida's exlusionary rule to the federal exclusionary rule, making Florida's exclusionary rule nothing more than a creature of judicial decisional policy. The Supreme Court of Florida then explicitly held that the amendment removed the independent protective force of state law from Florida's exclusionary rule. *Id.* at 324–325.

Since Florida's exclusionary rule is controlled by the federal exclusionary rule, the Supreme Court of Florida's references to Article I, § 12 of the Florida Constitution reflect a holding which rests on the state court's interpretation of the Fourth Amendment. *ASARCO Inc. v. Kadish,* 490 U.S. 605, 109 S.Ct. 2037, 104 L. Ed. 2d 696 (1989)(Where the Arizona

Supreme Court described a section of the Arizona Constitution as simply a "rescript" of a federal statute, the decision did not rest on independent state grounds). What actually occurred herein was that when the Supreme Court of Florida did not find any cases from this Court directly on point, it acted like any other federal court of appeal and interpreted the Fourth Amendment in a manner it believed this Court would rule on the facts herein. Therefore, this Court has jurisdiction to determine the conflict in Fourth Amendment jurisprudence created by the instant decision of the Supreme Court of Florida.

CONCLUSION

Based on the foregoing reasons stated herein and in the initial Petition, the Petitioner, the State of Florida, respectfully requests that this Court grant its Petition for a Writ of Certiorari to the Supreme Court of Florida and summarily reverse the Supreme Court of Florida based on the authorities herein and previously cited.

Respectfully submitted,

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